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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 253

PATRICK A. McKENNA,

Petitioner,

v.

FRED A. SEATON, Secretary of the Interior and JOHN C. deARMAS, JR.,

Respondents.

BRIEF OF RESPONDENT deARMAS JR. IN OPPOSITION

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Question Presented

Whether the Secretary of the Interior may permit applicants for oil and gas leases of federal land who were misled by administrative practice, a curative period in which to satisfy an irregularity in their applications which had no special significance without losing priority, where the applicants met the requirements of the statute and the original lease applications so showed?

Statement

This litigation concerns judicial review of a decision of the Secretary of the Interior determining the right to a

federal oil and gas lease as between two competing applicants.

Some three years after respondent deArmas filed an application for a federal oil and gas lease to 1,865.36 acres of land owned by the United States, the petitioner filed a competing application for a lease to the same land (App. 35).[1] The Secretary rejected petitioner's application and granted the lease to deArmas as the first qualified applicant (App. 35-40). The district court and court of appeals refused to repudiate the Secretary's action (App. 45; Pet. App. 18-30).

The law establishes the maximum federal acreage a person may hold under federal oil and gas leases or applications in the same state (30 U.S.C. 184; 352. See Pet. 4). DeArmas' holdings were within the statutory maximum. His original application contained an affirmative statement that his interests did not exceed the amount the statute allowed (App. 36). This satisfied the regulation for "public" land but not the literal phraseology of the "acquired" land regulation which called for a listing of the applicants' federal leasehold interests by serial number.[2]

This difference in the two regulations existed for a 3½ year interval after which the acquired land regulation was modified to omit the listing requirement and to be the same as the public land regulation. (Pet. 20-21). During

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[1] All "App." references are to the Appendix to appellant's brief below included in the record under Rule 21(1) of this Court. All "Pet. App." references are to the Appendix to the petition for a writ of certiorari.

[2] "Public" lands are part of the public domain. "Acquired" lands are those purchased or otherwise acquired by the United States. The Mineral Leasing Act of 1920 as amended (30 U.S.C. 181 *et seq.*) governs the leasing of public lands while the Mineral Leasing Act for Acquired Lands of August 7, 1947, c. 513, 61 Stat. 913 (30 U.S.C. 351 *et seq.*) controls the leasing of acquired lands, and by reference adopts the applicable provisions of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 352).

the interval when the regulations differed, the practice of the Bureau of Land Management was to treat the acquired lands regulation as if it were the same as the public land regulation and to accept applications for acquired land which omitted the listing but satisfied the public land regulation calling for a statement that the applicant did not hold more than the statutory maximum (App. 33).

In view of the Bureau's practice, the Secretary deemed it unfair to reject applications filed in reliance upon the administrative construction and allowed applicants about 30 days in which to supply the serial numbers of other federal holdings, without loss of priority (App. 33-34). DeArmas complied but in the meantime petitioner had filed an intervening application for an oil and gas lease listing his leaseholdings by serial number in accordance with the acquired land regulation (App. 35, 36, 37).

After the Secretary rejected petitioner's application, these proceedings were commenced. On cross motions for summary judgment the district court dismissed the complaint. The court below affirmed (one judge dissenting) pointing out that deArmas' application conformed with the administrative practice and that he had met the requirements of the statute. The court stated (Pet. App. 22-23):

> In these circumstances we cannot say that the issuance of the lease to deArmas was arbitrary, capricious, or otherwise illegal. He had met the requirements of the statute itself, which, moreover, contemplated administration of leases on acquired land as nearly as possible like those on public land. * * * Uniformity in practice had been adopted pending reassertion of uniformity in terms of regulations. To decide that the defect was curable within a specified time without loss of priority appears to us to be an

> entirely fair, reasonable, and rational administrative action, not inconsistent with any statutory provision or any principle of law or equity.

The court of appeals also noted that under the holdings of this court the primary responsibility for the solution of conflicts between contestants under the public land laws is with the Secretary of the Interior whose decision will not be superseded unless it is "plainly wrong." It concluded (Pet. App. 25):

> We think here he was right, and well within his lawful authority, in holding that deArmas was the first qualified applicant.

Argument

1. *The case does not present any questions which require review.* There is no conflict with other decisions of the court below or with the decisions of this Court. There is no question presented which has not been settled by this Court. The controlling principles are well settled,—namely that the Secretary is bound by his own regulations and that his decisions will not be disturbed unless they are in violation of law, plainly wrong or without a rational basis. (Pet. App. 24-25). There is no occasion for review of those principles. Here there is no regulation compelling the Secretary to reject an application for omission of an insubstantial detail. Here the maximum acreage allowable by statute was not violated and the application affirmatively establishes that fact. The Department, in practice, construed the acquired land regulation to be the same as the public land regulation. It follows that deArmas' application, as originally filed, satisfied the regulations as administered by the Department. Accordingly, deArmas was the first qualified applicant under the law and therefore was entitled to the lease.

Apart from this, the Secretary's duty to settle contested rights under the land laws carries with it the obligation to exercise fairness and good judgment. It was eminently appropriate for the Secretary to permit applicants, misled by his own administrative construction, to cure what the court below termed "an irregularity which had no special significance whatever in terms of a fair and reasonable administration of the land laws." (Pet. App. 24). To say that the Secretary is without power to take such action would strip him of authority he needs to manage properly the federal oil and gas lands. The decision below presents no issue for review and the application of settled principles is clearly correct. The dissent below is based on disagreement with the majority's application of those principles,—not with the principles themselves. (Pet. App. 26-30).

2. *There is doubt that the Secretary had the power to reject deArmas' application.* In the court below, deArmas contended that the Secretary was without statutory authority to require an acquired land applicant to list his federal oil and gas lease holdings by serial numbers where no such requirement is imposed on public land applicants. The court below did not reach this point and petitioner makes no mention of it. However, even if the petition were granted, the point provides an independent ground for affirmance of the judgment below.

The Secretary's power to administer acquired oil and gas lands is found in the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*). Section 3 authorizes the Secretary to lease acquired lands "under the same conditions" as public lands (30 U.S.C. 352; Pet. 4) and Section 10 mandatorily directs that his rules and regulations for acquired land "shall be the same as those prescribed under the mineral leasing laws [for public land] to the extent that they are applicable" (30 U.S.C. 359; Pet. 4). Respondent

deArmas fully satisfied the regulations as to public land by his affirmative statement that his federal oil and gas holdings did not exceed the statutory maximum (App. 36). Insofar as the acquired lands regulation called for a listing of such holdings by reference to serial numbers it imposed a different or greater burden on an applicant then was required by the public lands regulation. To that extent it is void. In other words, if deArmas had not supplied the listing of his other federal oil and gas holdings as permitted by the Secretary during the curative period, he would still have been the first qualified applicant, since he satisfied the public land regulation on the same point and the Secretary was without power to require more.

The history of section 10 of the Acquired Lands Act (30 U.S.C. 359) establishes the legislative intent that regulations for public and acquired lands must be the same where the objectives are the same. The qualifying phrase "to the extent that they are applicable" was designed to apply only where complete conformity was not possible as in the case of urban or improved property acquired by the United States. S. Rept. No. 161, 80th Cong., 1st sess. (1947) (Serial 11115), H. Rept. No. 550, 80th Cong., 1st sess. (1947) (Serial 11120). Here the objective of the two regulations was identical—to insure that an applicant did not violate the identical statute, specifying the identical maximum acreage which an applicant could hold under federal lease.

If an applicant satisfied the regulatory criteria determining compliance with the acreage requirement for public land, he automatically satisfied the criteria determining the acreage requirement for acquired land—since the very statute fixing the acreage requirement for public land is adopted by reference for acquired land (30 U.S.C. 352; Pet. 4). No one has advanced a single reason as to why or how a listing of serial numbers could be necessary to measure acres of acquired land oil and gas holdings but not public

land oil and gas holdings, where both regulations were designed to effectuate the identical maximum acreage statutory provision. In fact, both regulations were always the same except for a period of administrative aberration between January 28, 1951 and November 3, 1954, and during that period they were administratively treated the same. Respondent deArmas submits that the Secretary was without power to compel acquired land applicants to list oil and gas holdings by serial number when no such requirement was imposed on public land applicants. It follows that apart from the reasons assigned by the Secretary and the court below, the Secretary's decision to issue a lease to deArmas and to reject petitioner's application was in accordance with the law and the decision below is correct.

Respectfully submitted.

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AUGUST 1958.

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